

REMARKS

I. Status of the Claims

Claims 1-64 are pending in this application. Claims 1, 36, 43, 46 and 49 are amended herein to recite that the at least one fluorescent dye is chosen from dyes of formula (F1) and (F3). Claims 15 and 56, in which support for this amendment can be found, have been cancelled herein. Full support for these amendments can be found in the originally-filed specification and claims, for example, at paragraph [0079] of the originally-filed specification, and in original claims 15 and 56. No new matter has been added by these amendments.

II. Rejection Under 35 U.S.C. § 102(b) or in the Alternative Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-2, 7-15, 18-20, 26-28, 32-34, 36-37, 39-44, 46-47, 49-50 and 52-64 as being allegedly anticipated under 35 U.S.C. § 102(b) by, or in the alternative as being allegedly obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 6,001,135 to Rondeau et al. ("Rondeau"). Office Action, pp. 2-4.

A claim is obvious and/or anticipated only if each and every element as set forth in the claim is found in the prior art reference. M.P.E.P. §§ 2131, 2143. However, Rondeau does not teach each and every element of Applicants' claims as presently amended and, as a result, Rondeau cannot anticipate or, in the alternative, make obvious the present claims. The Examiner states that Rondeau "teaches a dyeing composition comprising a fluorescent [dye] of a formula (14), which is identical to the claimed formula (F4) as claimed in claims 1, 11, and 14-15 . . ." Office Action at page 2. Additionally, the Examiner alleges that Rondeau, "teaches the same dyeing ingredients

of non-associative thickening polymer and a fluorescent dye identical to the fluorescent dye of the claimed formula (F4) in the claimed amounts, which inherently would have the same physical properties of reflectances, color properties and solubility in specific medium as those claimed and wherein the dyeing composition also can be applied to the claimed type of hair with the claimed tones as claimed in the claims 7-10, 12-13, 40-42, 52-54, 60, and 62-64.” *Id.* at page 3. Because Applicants have amended the present claims to exclude formula (F4), Rondeau no longer teaches nor suggests Applicants’ claimed fluorescent dye. Thus, Applicants respectfully request that this rejection be withdrawn.

III. Rejection Under 35 U.S.C. § 103(a)

1. *Rondeau in view of Lang*

The Examiner has rejected claims 3-6, 29-31, 35, 38, 45, 48 and 51 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Rondeau in view of WO 99/36045 to Lang et al. where the English translation U.S. Pat. No. 6,576,024 (“Lang”) is used in the rejection. Office Action at page 4. The Examiner admits that Rondeau does not teach the specific species of non-associative thickening polymers claimed, but states that Lang, “in analogous art of hair dyeing formulation, teaches a composition comprising non-associative thickening polymers such as nonionic guar gums, scleroglucan gums (biopolysaccharide of microbial origin) derived from plant exudates such as gum Arabic and nonionic guar gums modified with C1-C6 hydroxyalkyl groups as claimed in claims 2-4, 38, 45, 48 and 51 . . .” *Id.*

For the reasons set forth above, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness over Rondeau with respect to the

claims as presently amended. More specifically, Rondeau does not teach or suggest at least one fluorescent dye chosen from formula F1 and formula F3. As the Examiner has provided no evidence that Lang remedies this deficiency, there can be no *prima facie* case of obviousness over this combination of references either.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

2. *Rondeau in view of Vandebossche*

The Examiner has rejected claims 21-24 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Rondeau in view of U.S. Pat. No. 6,391,062 to Vandebossche et al. ("Vandebossche"). Office Action at page 5. Specifically, the Examiner alleges that "Rondeau suggests the use of other direct dyes in the keratin formulation" and Vandebossche teaches "a dyeing composition comprising direct dyes such as nitrobenzene and anthraquinone dyes" within the claimed ranges of Applicants' invention. *Id.* Therefore, the Examiner concludes, one having ordinary skill in the art at the time the invention was made would have been motivated to modify the composition of Rondeau et al. by incorporating the direct dyes in the claimed amounts as taught by Vandebossche et al.

For the reasons set forth above, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness of the presently amended claims over Rondeau. As stated previously, Rondeau does not teach or suggest at least one fluorescent dye chosen from formulas F1 and F3. As the Examiner has provided no evidence that Vandebossche cures this deficiency, there can be no *prima facie* case of obviousness over this combination of references either.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

3. *Rondeau in view of Giuseppe*

The Examiner has rejected claim 25 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Rondeau in view of U.S. Pat. No. 5,744,127 to Giuseppe et al. (“Giuseppe”). The Examiner states that Rondeau teaches dyeing compositions can be in various forms such as in the forms of liquids, creams or gel for dyeing keratin fibers. Office Action at page 7. The Examiner then alleges that Giuseppe, “in other analogous art of hair treating formulation, teaches compositions formulated as a hair shampoo and hair dyeing as well.” *Id.* Therefore, the Examiner alleges it would have been obvious for one of ordinary skill in the art to modify Rondeau with the teachings of Giuseppe because Giuseppe clearly teaches that the dyeing composition can be formulated in a shampoo form and would expect such a composition to have similar properties to those claimed. *Id.*

The deficiencies of Rondeau are discussed above. Since Giuseppe does not cure these deficiencies, the Examiner cannot establish a *prima facie* case of obviousness.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

IV. **Allowable Subject Matter and Claim Objections**

The Examiner indicates that claims 16 and 17 contain allowable subject matter and would be allowable if rewritten in independent form including all limitations of the base and intervening claims, specifically stating that the prior art does not teach or disclose claimed formula (F3). Office Action at page 7.

Applicants thank the Examiner for this indication and note that they have currently amended claims 16 and 17 to depend on independent claim 1, which now recites compounds of formulas (F1) and/or (F3). In view of Applicants' newly amended claims, the Examiner's indication of allowable subject matter in claims 16 and 17, and the deficiencies in the cited prior art discussed above, Applicants respectfully request allowance of all pending claims.

V. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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By: 

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